

To: Rhodes, Julia[Rhodes.Julia@epa.gov]
From: Wooden-Aguilar, Helena
Sent: Fri 3/6/2015 12:19:32 AM
Subject: Re: Important - Arrowhead and REACH

Ok. Thx. This might have to wait until Monday. I don't think I can make it in. I will work on something tonight.

Am I going crazy?

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Mar 5, 2015, at 7:18 PM, "Rhodes, Julia" <Rhodes.Julia@epa.gov> wrote:

I am out tomorrow. Mary is acting

Sent from my iPhone

On Mar 5, 2015, at 7:11 PM, "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov> wrote:

I think we have enough resources public (eg. What Julia cited in addition to what we have on our website) that OCR can craft a response that does not give the impression that they have to guess on the question of compliance with title VI.

Regarding your point on turning a corner, I agree that the program has continued to turn a corner and many of our actions over the past several years (eg. Our policy on engaging the parties) demonstrates this. While there is always more work to be done the program continues to emphasize our balance of neutrality.

I will work with you and OGC on a draft response. If REACH is moving to ADR I am assuming the parties can explore these questions as well.

Helena

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Mar 5, 2015, at 6:59 PM, "Matthew, Dayna" <Matthew.Dayna@epa.gov> wrote:

Helena

I do understand being nuanced. However it appears to me that ADEM and NC DENR are asking the very question - however broad - that we should want to answer.

I do not believe OCR would rather just leave the states in a guessing game or that we would prefer to engage in self protective conversations more than actually help affect change in the way permitting is done in North Carolina and Alabama.

In my short time here I have been convinced that OCR is looking to change "business as usual" and in my view this is an ideal opportunity to do just that by responding with as much specificity as we can. Here is an example:

Ex. 5 - Deliberative Process

I have other ideas that I believe you should consider before deciding to respond as you have proposed.

Dayna

Sent from my iPhone

On Mar 5, 2015, at 6:35 PM, Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov> wrote:

I think if we were having informal resolution discussions I would recommend a more nuanced response. But I am less comfortable with tailoring anymore than what we have said to ECOS. I will work with Julia.

Helena Wooden-Aguilar
Assistant Director

External Civil Rights - US EPA

202-564-0792 (office)

Ex. 5 - Deliberative Process

wooden-aguilar.helena@epa.gov

On Mar 5, 2015, at 6:26 PM, "Matthew, Dayna"

<Matthew.Dayna@epa.gov> wrote:

Picking up on Julia's idea, may I suggest that we will offer a level of specificity (**Ex. 5 - Deliberative Process**) if we quote examples from the 2006 Recipients guidance rather than just refer to it. For example we could offer suggestions from Part III from 71 FR. 54 (March 21, 2006) and then refer to other resources.

I think the questions are evidence OCR is having an impact and we should be able to answer even these broad inquiries in my opinion.

Moreover I might suggest we consider the pros and cons of an offer to meet specifically to discuss how to tailor these broader responses to the states specific situations (**Ex. 5 - Deliberative Process**)

Ex. 5 - Deliberative Process

Dayna

Sent from my iPhone

On Mar 5, 2015, at 5:49 PM, Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov> wrote:

Ok. I will work with OGC and prepare a draft response. Thx

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Mar 5, 2015, at 5:48 PM, "Golightly-Howell, Velveta"

<Golightly-Howell.Velveta@epa.gov> wrote:

THEN LET'S DO SO HERE.

Sent from my iPhone

On Mar 5, 2015, at 4:15 PM, Wooden-Aguilar, Helena
<Wooden-Aguilar.Helena@epa.gov> wrote:

Just to be clear, the response below is generally what we
have shared with those types of inquires in the past.

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Mar 5, 2015, at 3:13 PM, "Golightly-Howell,
Velveta" <Golightly-Howell.Velveta@epa.gov> wrote:

Agree about the broadness of the questions.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

If others
have thoughts, please share.

Velveta

Sent from my iPhone

On Mar 5, 2015, at 2:18 PM, Wooden-Aguilar,
Helena <Wooden-Aguilar.Helena@epa.gov> wrote:

Lilian

I agree that we would not respond to such open
ended questions, especially to parties that are
apart of an open investigation.

In the past we have said it's case by case and
referred inquires to our website regarding how
we have investigated matters. We have a page
where we have posted past decisions like

Padres

(<http://www.epa.gov/ocr/TitleVICases/decisions/index.html>)
or settled cases like LDAF and other
settlements.

(<http://www.epa.gov/ocr/TitleVICases/index.html>)

Helena

Helena

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Mar 5, 2015, at 1:07 PM, "Dorka, Lilian"
<Dorka.Lilian@epa.gov> wrote:

Wow that is quite the broad question. At
the risk of sounding like one of those
pesky lawyers ☐ ☐ it depends?!

But seriously, it does as "compliance" on
any given day would be highly fact-
based? Also. This is not the kind of
question you can respond to via email or
in passing? I assume the reason AL and
NC would ask is directly related to our
cases and as such, we we say that we have
open cases and cannot respond in light
of ongoing cases as any general response
could be interpreted as a specific response
related to those cases??

Sent from my iPhone

On Mar 5, 2015, at 12:57 PM, Wooden-
Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov> wrote:

All-

I wanted to let you know that I received this message below.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thoughts on how OCR will respond.

Helena

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

Begin forwarded message:

From: "Tommelleo, Nancy"
<Tommelleo.Nancy@epa.gov>
Date: March 5, 2015 at
12:43:19 PM EST
To: "Wooden-Aguilar, Helena"
<Wooden-Aguilar.Helena@epa.gov>
Cc: "O'Lone, Mary"
<OLone.Mary@epa.gov>,
"Jones, Kim A"
<Jones.Kima@epa.gov>

Ok thanks. Also just left you a message — we can talk tomorrow.

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy has asked our DRA for any EPA guidance or findings that illuminate how a state can comply with title VI prohibition on adverse and disproportionate impacts. I also got a similar question from

North Carolina's Acting
General Counsel on Monday
(we had all the general counsels
here for a get together). Just
wanted to know what we are
telling/providing states on this.

Thanks – I am in all day
tomorrow – so give me a buzz if
you can.

Nancy



Nancy L. Tommelleo

Deputy Regional Counsel

United States Environmental
Protection Agency

Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

tel: 404.562.9571

fax: 404.562.9663

tommelleo.nancy@epa.gov

Confidentiality Notice:

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<image001.png>

To: Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]
From: O'Lone, Mary
Sent: Tue 3/24/2015 8:21:29 PM
Subject: FW: REACH - parties have agreed to begin mediator selection

FYI. Will came to see me after he went to your office.

I was going to send to Nancy & Daria, but thought I should let you know first.

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4992

From: O'Lone, Mary
Sent: Tuesday, March 24, 2015 4:20 PM
To: Rhodes, Julia; Packard, Elise; Shenkman, Ethan; Moffa, Anthony
Subject: REACH - parties have agreed to begin mediator selection

Will Hall went by OCR to let Helena know, but she wasn't in. He will try again later today.

The next step is for the parties to come up with an agreed to list of qualities they'd like in the mediator (*e.g.*, familiar with CAFOs, know Title VI).

Then the list is sent to the contractor who sends Will the resumes of mediators who meet those

criteria. The parties look at the resumes & agree to a few mediators to interview. After both interview them, then they agree on a mediator.

Agreeing to the mediator is the point at which Will would recommend that OCR send the letter to the parties saying it is putting the investigation on hold. It could take several weeks (or more) to get to that point.

Will says that the new GC for NC DENR came from Arnold & Porter up here in DC.

Thanks, Mary

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4992

To: Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]
From: Covington, Jeryl
Sent: Tue 3/3/2015 2:05:11 PM
Subject: RE: Draft REACH Talking Points - DCRO Mtg
For Review by Director: Materials for REACH Discussion

Per your request to utilize the preliminary case management plan in identifying the legal theory in addressing the REACH complaint, the attached is the latest copy of the referenced plan (email to the Director dated December 11, 2014). Do you have a more recent version?

I am aware that some timelines and off-ramp documents/emails have been drafted; however, my review of these did not contain copy of a revised plan.

From: Wooden-Aguilar, Helena
Sent: Monday, March 02, 2015 8:03 PM
To: Covington, Jeryl
Subject: Re: Draft REACH Talking Points - DCRO Mtg

This is what we need! Can you add this to the briefing doc and then leave a bullet for the theory? The theory bullet can be taken from the prelim case management plan.

Helena Wooden-Aguilar

Assistant Director

External Civil Rights - US EPA

202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Mar 2, 2015, at 5:37 PM, "Covington, Jeryl" <Covington.Jeryl@epa.gov> wrote:

Here are some of my initial thoughts with respect to DCRO talking points. I will re-review and finalize in the morning.

- On February 20, 2015, the Office of Civil Rights accepted the September 3, 2014 administrative complaint filed against the North Carolina Department of Environment and Natural Resources (DENR) by Earthjustice on behalf of North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help (REACH), and Waterkeeper Alliance, Inc.

- The Office of Civil Rights accepted the following allegation that the North Carolina Department of Environment and Natural Resources' renewal of a National Pollutant Discharge Elimination System (NPDES) general permit (State General Permit NO. AWG 100000) "allows industrial swine facilities in North Carolina to operate with grossly inadequate and outdated systems of controlling animal waste and little provision for government oversight, which has an unjustified disproportionate impact on the basis of race and national origin against African Americans, Latinos and Native Americans in violation of Title VI of the Civil Rights Act of 1964...."

- The complaint alleges that as a result of the general permit issuance, surrounding residents have had health impairments, and quality of life and other community adverse impacts. The complaint provided copies of health, and environmental studies and reports to substantiate their complaint. To date, none of these studies or reports have been verified for relevancy/accuracy by OCR or EPA offices or programs.

- During the preliminary phase of the investigation, the Office of Civil Rights has consulted with the Department of Justice; EPA's Region 4 office; the Offices of Water, Air, and Environmental Justice; and the Conflict Prevention and Resolution Center discuss approaches to investigation or resolve the complaint.

- On Monday, March 2, 2015, the complainant's representative indicated that their clients were interested in pursuing alternative dispute resolution (ADR) with DENR. DENR has made inquiry with respect to (ADR). OCR will coordinate these activities.

To: Covington, Jeryl[Covington.Jeryl@epa.gov]
From: Wooden-Aguilar, Helena
Sent: Tue 3/3/2015 1:02:44 AM
Subject: Re: Draft REACH Talking Points - DCRO Mtg

This is what we need! Can you add this to the briefing doc and then leave a bullet for the theory? The theory bullet can be taken from the prelim case management plan.

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

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To: Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]
From: Covington, Jeryl
Sent: Mon 3/2/2015 10:37:27 PM
Subject: Draft REACH Talking Points - DCRO Mtg

Here are some of my initial thoughts with respect to DCRO talking points. I will re-review and finalize in the morning.

- On February 20, 2015, the Office of Civil Rights accepted the September 3, 2014 administrative complaint filed against the North Carolina Department of Environment and Natural Resources (DENR) by Earthjustice on behalf of North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help (REACH), and Waterkeeper Alliance, Inc.

- The Office of Civil Rights accepted the following allegation that the North Carolina Department of Environment and Natural Resources' renewal of a National Pollutant Discharge Elimination System (NPDES) general permit (State General Permit NO. AWG 100000) "allows industrial swine facilities in North Carolina to operate with grossly inadequate and outdated systems of controlling animal waste and little provision for government oversight, which has an unjustified disproportionate impact on the basis of race and national origin against African Americans, Latinos and Native Americans in violation of Title VI of the Civil Rights Act of 1964...."

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- On Monday, March 2, 2015, the complainant's representative indicated that their clients were interested in pursuing alternative dispute resolution (ADR) with

DENR. DENR has made inquiry with respect to (ADR). OCR will coordinate these activities.

To: Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]
From: O'Lone, Mary
Sent: Fri 2/27/2015 1:09:07 AM
Subject: Re: REACH- NPDES General Permit # AWG100000

Ex. 5 - Attorney Client

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Ave., NW

Washington, DC 20460

(202) 564-4992

From: Wooden-Aguilar, Helena
Sent: Thursday, February 26, 2015 7:24 PM
To: O'Lone, Mary
Subject: Re: REACH- NPDES General Permit # AWG100000

I will catch up tomorrow on these emails. What is this about?

Helena Wooden-Aguilar
Assistant Director

External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Feb 26, 2015, at 6:59 PM, "O'Lone, Mary" <OLone.Mary@epa.gov> wrote:

I will put that language in track changes in the draft I send out tonight.

The reference to (d)(ii) didn't appear in either the REACH notification or acceptance letters to NC DENR.

My recommendation is that in future, that reference go in the acceptance letter (it wasn't in the last version of the draft template letter that I commented on. ~~Here is the language that used to be in acceptance letters back in the 1900s.~~

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

The Office of Civil Rights has reviewed the complaint submitted by the St. Francis Prayer Center and determined that the complaint meets the requirements of 40 C.F.R. section 7.120. A copy of the complaint is enclosed for your review and response. Please indicate within twenty-one days of receipt of this letter whether you intend to submit a written response pursuant to 40 C . F . R. section 7 . 120(d) (ii).

I am not saying that language is the perfect articulation – but it is an articulation that can be futzed with. That is what I will stick in the draft RFI tonight.

Good night.

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4992

From: Matthew, Dayna

Sent: Thursday, February 26, 2015 6:52 PM

To: O'Lone, Mary; Dorka, Lilian; Covington, Jeryl; Wooden-Aguilar, Helena; Moffa, Anthony

Subject: RE: REACH- NPDES General Permit # AWG100000

Friends –

I am starting with that salutation because I want to raise an issue that was ostensibly settled yesterday. In other settings this practice is known as “beating a dead horse.” Nevertheless, I think it’s important.

I still would like to make the case for adding language in this RFI that specifically tracks 40 C.F.R. 7.120(d)(ii) which provides “If the complaint is accepted, . . . The OCR will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.” (emphasis mine) I read this part of the regulation titled “Complaint investigations” as a required element of the recipient/applicant’s due process and I think we should add it to the RFI expressly. I would even go so far as to ask you to look and see whether in previous cases either the acceptance letter or elsewhere, we have specifically cited this provision. Mary, I think you’ve said we have.

Since Mary is sending an updated version of this RFI this evening, I ask the group to please consider revisiting our conclusion reached yesterday on this issue.

Thank you . . . friends (!)

Dayna

From: O'Lone, Mary

Sent: Thursday, February 26, 2015 6:43 PM

To: Dorka, Lilian; Covington, Jeryl; Wooden-Aguilar, Helena; Moffa, Anthony; Matthew, Dayna

Subject: RE: REACH- NPDES General Permit # AWG100000

What my first sentence was trying to say was that it looks like I didn't send the most recent version of the draft RFI after we finished our call from 2-3 yesterday. I thought I had but neither Dayna nor I could find it in our emails. I will send it when I get home. If you don't see it by 9 pm tonight, call me at home & remind me. Ex. 6 - Personal Privacy It means it slipped out of my pea brain between the office & home.

I will add in the January 1, 2000 date before I send it.

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4992

From: Dorka, Lilian

Sent: Thursday, February 26, 2015 6:39 PM

To: O'Lone, Mary; Covington, Jeryl; Wooden-Aguilar, Helena; Moffa, Anthony; Matthew, Dayna

Subject: RE: REACH- NPDES General Permit # AWG100000

2000 sounds good to me. And we just take out what is in parentheses. Thanks Jeryl and Mary and Dayna.

From: O'Lone, Mary

Sent: Thursday, February 26, 2015 6:35 PM

To: Covington, Jeryl; Dorka, Lilian; Wooden-Aguilar, Helena; Moffa, Anthony; Matthew,

Dayna

Subject: RE: REACH- NPDES General Permit # AWG100000

All-

It looks I didn't send the post I have looked around some more this afternoon & OGC's law librarian did too. I was going through the complaint to see if they had anything--thanks Dayna for stopping me.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

But really, I leave it to you all. I am out tomorrow & will catch up with you on Monday.

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4992

From: Covington, Jeryl

Sent: Thursday, February 26, 2015 5:10 PM

To: Dorka, Lilian; Wooden-Aguilar, Helena; O'Lone, Mary; Moffa, Anthony; Matthew, Dayna

Subject: RE: REACH- NPDES General Permit # AWG100000

Today, I have continued to review multiple sources to determine the initial general permit issue date.

One of the sources documenting and confirming the permit issuance is the US EPA Water Permits Division's State Compendium report entitled "*Programs and Regulatory Activities Related to Animal Feeding Operations*" (date May 2002). Per this documentation, the Swine Waste Operation General Permit was issued January 14, 1997 and was effective until December 31, 2001.

Furthering my review of other legislative notices and information, the January 1997 appears to be the initial date of general permit issuance. The legislative actions were undertaken by the NC General Assembly 1995 Session. The third reading and ratification

was June 21, 1996. This legislative session adopted the recommendations of the Blue Ribbon Study Commission on Agricultural Waste.

Please let me know if you have uncovered additional or contrary information.

From: Covington, Jeryl
Sent: Thursday, February 26, 2015 9:29 AM
To: Dorka, Lilian; Wooden-Aguilar, Helena; O'Lone, Mary; Moffa, Anthony; Matthew, Dayna
Subject: RE: REACH- NPDES General Permit # AWG100000

This legislative information identifies when DENR was required to develop the permitting program. As I understand my charge, I am to confirm the initial date of the general permit issuance. To date, I have not confirm this date only the promulgation of the rules.

From: Dorka, Lilian
Sent: Wednesday, February 25, 2015 6:34 PM
To: Covington, Jeryl; Wooden-Aguilar, Helena; O'Lone, Mary; Moffa, Anthony; Matthew, Dayna
Subject: RE: REACH- NPDES General Permit # AWG100000
Importance: High

So I am not sure where this leaves us? Are we using the January 1997 date?

From: Covington, Jeryl
Sent: Wednesday, February 25, 2015 4:56 PM
To: Wooden-Aguilar, Helena; O'Lone, Mary; Moffa, Anthony
Cc: Dorka, Lilian; Matthew, Dayna
Subject: REACH- NPDES General Permit # AWG100000

As a follow-up to our discussions related to establishing the initial issuance date of general permit for swine operations, I submit the following information obtained from the enacted body, the North Carolina General Assembly.

History of the legislative action, sponsors, and approvals:
<http://www.ncleg.net/gascscripts/BillLookUp/BillLookUp.pl?Session=1995&BillID=S1217>

Session Law:

<http://www.ncleg.net/Sessions/1995/Bills/Senate/HTML/S1217v5.html>

The attached Session Law identifies that the General Assembly approved the development of applications and issue permits ("§ 143-215.10C. Applications and permits).

Contained within the same Session Law, the General Assembly issued the following effective dates for these activities.

(c)(1) G.S. 143-215.10C, as enacted by Section 1 of this act, becomes effective January 1, 1997. In order to ensure an orderly and cost-effective phase-in of the permit program, the Department of Environment, Health, and Natural Resources shall issue permits for animal operations over a five-year period. The Department shall issue permits for approximately twenty percent (20%) of the animal waste management facilities that are in operation on January 1, 1997, during each of the five calendar years beginning January 1, 1997, and shall give priority to those animal waste management systems serving the largest animal operations. An animal waste management system that is deemed permitted by rule on January 1, 1997, under 15A N.C.A.C. 2H.0217 may continue to operate on a deemed permitted basis as provided in subsection (b) of this section.

As noted above, the Session Law refers to a January 1997 date. I will continue to seek verification of the initial permit issuance as this information does not specify the permit type. However, this legislative action could be all inclusive.

To: Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]
From: Dorka, Lilian
Sent: Mon 4/20/2015 6:10:22 PM
Subject: ACTION: FOLLOW UP PRESS QUESTIONS

Pls see #3 and check 4

From: Dorka, Lilian
Sent: Friday, April 17, 2015 5:43 PM
To: Dorka, Lilian
Subject: RE: ACTION: Interview Velveta Golightly-Howell

Hi Jennifer, please see below. Thanks!

From: Colaizzi, Jennifer C.
Sent: Friday, April 17, 2015 3:09 PM
To: Dorka, Lilian
Cc: Lee, Monica; Rhodes, Julia; Matthew, Dayna; O'Lone, Mary; Covington, Jeryl; Wooden-Aguilar, Helena; Golightly-Howell, Velveta
Subject: Re: ACTION: Interview Velveta Golightly-Howell

Reporter has follow-up Qs to our response. He stressed the importance of his readers understanding the process. He is writing for Monday.

1. What is the alternative dispute resolution that OCR is offering to DENR and Earthjustice?

Information about the Alternative Dispute Resolution being offered to the complainants and DENR can be found on OCR's Website at the following link:
<http://www.epa.gov/civilrights/faq-adrt6.htm> .

2. Once OCR accepts a complaint for review, does that mean an investigation is actually underway? [Numerous reporters said something like, "EPA is investigating DENR after environmentalists filed their complaint...."]

As previously stated, when OCR receives a complaint, OCR conducts a preliminary review of the complaint for acceptance, rejection or referral to the appropriate agency. If OCR's review concludes that the complaint meets the four jurisdiction requirements previously discussed, OCR will accept the complaint for investigation and an investigation is initiated.

3. What is the timeline for the investigation?

4. If OCR sides with environmentalists' argument, what are the maximum penalties/requirements it can impose on DENR?

First, As the OCR case involving DENR is currently under investigation, OCR cannot discuss any additional information regarding that case. In general, with respect to all OCR investigation, OCR is a neutral fact finder in light of the laws and regulations it enforces. If, after conducting an investigation OCR finds a violation of one to the civil rights laws, OCR is required (see reg at..) to see voluntary compliance. If OCR is unable to reach voluntary compliance, per the regulation at ... OCR may take formal enforcement action to initiate a proceeding to terminate federal financial assistance for EPA or to refer the matter to DOJ for judicial enforcement.

5. Can OCR force DENR to rewrite its general permit for swine operations?

As the OCR case involving DENR is currently under investigation, OCR cannot provide any additional information regarding that case.

6. How does OCR judge, in a situation like this, whether an agency was discriminatory? Is it intent (clear evidence that an agency was trying to be discriminatory)? Or effect (an agency's actions had the consequence of discrimination, whether or not it intended to)?

As the OCR case involving DENR is currently under investigation, OCR cannot discuss any additional information regarding that case.

The OCR first conducts a preliminary jurisdictional review to determine whether the complaint meets the requirements to be accepted for investigation. If so, an investigation of the accepted allegations is conducted. After evaluating the evidence gathered, the EPA must determine whether it is sufficient to preliminarily conclude that a violation of Title VI has occurred, e.g., because of intentional discrimination or an unintentional adverse disparate impact. If the EPA concludes there is not sufficient evidence of intentional discrimination or an adverse disparate impact, then a complaint is dismissed. If the EPA concludes that there is sufficient evidence,

then the EPA discusses its preliminary findings with the recipient and attempts to voluntarily resolve the issues. The EPA's Title VI implementing regulations (40 C.F.R. Part 7) also state that it is the EPA's policy to seek informal resolution of Title VI complaints whenever possible. If the EPA finds a violation of Title VI and attempts to seek informal resolution or achieve voluntary compliance fail, then the EPA may initiate a process to terminate the financial assistance, or use any other means authorized by law, including referral of the matter to the U.S. Department of Justice, to enforce Title VI.

Sent from my iPhone

On Apr 16, 2015, at 6:26 PM, "Dorka, Lilian" <Dorka.Lilian@epa.gov> wrote:

Hi Jen, I am not sure if we ever resolved this with you? If not, my sincere apologies. Here is a suggested response to use for this reporter if still needed, but also for response to any similar inquiries that may come up in the future. Thanks so much for all of your help and support! Lilian

Q1: What are steps needed to file a complaint?

A1: EPA's Office of Civil Rights (OCR) is responsible for carrying out compliance with federal nondiscrimination statutes that together prohibit discrimination on the basis of race, color or national origin -- including with respect to limited-English proficiency (Title VI), disability, sex, and age. OCR carries out this responsibility through a variety of means including: complaint investigation; agency-initiated compliance reviews; pre-grant award assurances and audits; and technical assistance and outreach activities. With respect to complaint investigations, anyone who believes that any of the federal nondiscrimination laws enforced by OCR have been violated by a recipient of EPA financial assistance may file an administrative complaint with EPA's OCR.

Q2: What is OCR's process for handling a complaint once it is filed.

A2: Pursuant to the EPA's nondiscrimination regulations, once OCR receives a complaint, OCR conducts a preliminary review of the complaint for acceptance, rejection or referral to the appropriate agency. OCR accepts for investigation complaints that meet the four jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. See 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that if true, may violate the EPA's nondiscrimination regulations (e.g., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). Third, the complaint must be filed within 180 calendar days of the alleged act. See 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. See 40 C.F.R. § 7.15.

Please note that, acceptance of a complaint for investigation in no way amounts to a decision on the merits. Rather, it means the complaint has met the four jurisdictional criteria. It does not constitute an assessment as to the veracity of the allegations or represent a conclusion as to whether any violation of the federal civil rights laws has occurred.

With respect to OCR's complaint filed by Earthjustice against the North Carolina Department of Environment and Natural Resources (DENR), consistent with EPA's non-discrimination regulations, OCR is pursuing informal resolution of the complaint, including offering alternative dispute resolution to DENR and Earthjustice, while at the same time carrying out our investigative responsibilities and obligations to enforce Title VI.

From: Colaizzi, Jennifer C.
Sent: Tuesday, April 14, 2015 5:53 PM
To: Golightly-Howell, Velveta
Cc: Dorka, Lilian; Lee, Monica; Rhodes, Julia; Matthew, Dayna; O'Lone, Mary; Covington, Jeryl; Wooden-Aguilar, Helena
Subject: RE: ACTION: Interview Velveta Golightly-Howell

Hi All:

I have been having difficulty with my e-mail system. So, if you already responded, I

apologize for not seeing the response and asking again.

The reporter wants to move ahead with his story and would like an EPA quote. If we can't get him something by end of week, he will not provide our perspective. He does not want to misrepresent OCR's process for handling claims, as an environmentalist explained some of the process to him, but he does not know how accurate her explanation is.

Does OCR want to add to the below proposed response?

Cheers,

Jen

From: Colaizzi, Jennifer C.
Sent: Thursday, April 09, 2015 9:58 AM
To: Golightly-Howell, Velveta
Cc: Dorka, Lilian; Lee, Monica; Rhodes, Julia; Matthew, Dayna; O'Lone, Mary; Covington, Jeryl; Wooden-Aguilar, Helena
Subject: Re: ACTION: Interview Velveta Golightly-Howell

Velveta:

Does this mean, my suggestion is final OCR-approved response?

Sent from my iPhone

On Apr 9, 2015, at 8:49 AM, "Golightly-Howell, Velveta" <Golightly-Howell.Velveta@epa.gov> wrote:

Your suggestion is accepted Jen. Thanks. Velveta

Sent from my iPhone

On Apr 8, 2015, at 4:45 PM, Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov> wrote:

Hi Jen

Thanks for the email. I see you have copied my management so they are looped in on the request below.

Helena

Helena Wooden-Aguilar

Assistant Director

External Civil Rights - US EPA

202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Apr 8, 2015, at 4:15 PM, "Colaizzi, Jennifer C."
<Colaizzi.Jennifer@epa.gov> wrote:

Hi All:

The reporter put this story, but his editor wants him to file potentially by the beginning of next week. Can we send him a response by Friday? Below in the chain, I suggested a starter response.

Cheers,

Jen

From: Wooden-Aguilar, Helena

Sent: Tuesday, March 24, 2015 6:16 PM

To: Colaizzi, Jennifer C.

Cc: Dorka, Lilian; Golightly-Howell, Velveta; Lee, Monica; Rhodes, Julia; Matthew, Dayna; O'Lone, Mary; Covington, Jeryl

Subject: Re: ACTION: Interview Velveta Golightly-Howell

Thanks for the email. Will bring to the Directors attention.

Helena

Helena Wooden-Aguilar

Assistant Director

External Civil Rights - US EPA

202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Mar 24, 2015, at 4:15 PM, "Colaizzi, Jennifer C."
<Colaizzi.Jennifer@epa.gov> wrote:

Hi All:

Outlet: North Carolina Health News

DDL: 3/30

Reporter is requesting to interview Velveta. However, he will accept written responses. He is looking for a background interview about the steps needed to file a complaint and OCR's process of handling a complaint once it is filed. He is unfamiliar with complaints coming to OCR. This is the second reporter who has expressed surprise with complaints being filed with OCR, as this seems uncommon.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Jennifer Colaizzi
Press Officer

Office of Public Affairs

U.S. Environmental Protection Agency

202-564-7776 (o)

Ex. 6 - Personal Privacy

From: Gabe Rivin [<mailto:gabe@gaberivin.com>]
Sent: Monday, March 23, 2015 1:03 PM
To: Colaizzi, Jennifer C.
Subject: Interview Velveta Golightly-Howell

Hi Jennifer,

I'm an environment reporter with North Carolina Health News, and I'm working on a story about hog farms in NC. In February, the EPA's OCR agreed to review a complaint filed by environmentalists, who alleged that North Carolina has discriminatory state regulations for hog farms. I have a few questions about the OCR's processes for handling these complaints, as well as what the outcomes of these complaints might be.

Is Velveta Golightly-Howell available for an interview this week? I won't take more than 15 minutes of her time.

Thanks,

Gabe Rivin

Freelance reporter and science writer

gaberivin.com

To: Matthew, Dayna[Matthew.Dayna@epa.gov]
From: Wooden-Aguilar, Helena
Sent: Fri 2/6/2015 9:33:49 PM
Subject: Re: REACH Preliminary Case Management Plan -

FYI. Mary is off today.

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov

On Feb 6, 2015, at 4:26 PM, "Matthew, Dayna" <Matthew.Dayna@epa.gov> wrote:

Mary,

After going over the final work product with Velveta, we wanted to more clearly indicate the two documents – the Action Plan and the REACH Preliminary Case Management Plan were related. I therefore added references to the Action Plan steps, carefully omitting any reference to “90 days” in the blue title lines of your document where appropriate. (See attached) I hope you agree this addition is cosmetic but does not change the substance of your awesome work product. If for any reason you disagree, please let me know and I’ll let Gwen and John know that change has not been accepted. Not the optimal way to jointly edit, I know - here we are at the proverbial “last minute” despite our best efforts! Thanks,
Mary

Best.

Dayna

From: O'Lone, Mary
Sent: Thursday, February 05, 2015 6:08 PM
To: Matthew, Dayna; Wooden-Aguilar, Helena; Dorka, Lilian; Golightly-Howell, Velveta
Cc: Rhodes, Julia; Packard, Elise; Moffa, Anthony
Subject: REACH Preliminary Case Management Plan

Dayna-

I have changed the title of the document to a Preliminary Case Management Plan. I have not put 90 days in the title as Ethan agreed with CRFLO concerns (which you & I have discussed previously) that arbitrary numbers often take on a life of their own & are probably not a good idea in a process that has so many variables & potential time sinks that can make achieving those timeframes impossible.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Also, as we discussed on the phone – I changed Dismissal Pathway to Administrative Closure Pathway per Lilian's great catch.

Also, you will see that the box for whether NC DENR is a recipient of other federal funding is not checked. I sent an email to Jeryl & Ericka today asking if they could research that & give us the answer. I have not heard yet, but perhaps you will by tomorrow. I am out tomorrow but will check in with you on Monday.

Thanks, Mary

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4992

<REACH and ACTION PLAN prelim case management plan 2.5.15.docx>

To: O'Lone, Mary[OLone.Mary@epa.gov]; Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]; Farrell, Ericka[Farrell.Ericka@epa.gov]
From: Covington, Jeryl
Sent: Mon 2/9/2015 9:02:08 PM
Subject: RE: Assignment - REACH

The strategic plan information (memo to Bill Ross former secretary) was from 2004. I believe that the DENR link was from their current website.

I am reviewing the NC June 2014 CAFR; it was posted at another location.

From: O'Lone, Mary
Sent: Monday, February 09, 2015 3:59 PM
To: Covington, Jeryl; Wooden-Aguilar, Helena; Farrell, Ericka
Subject: Re: Assignment - REACH

I thought Dayna told me all of her information was from 2004.

I told her I thought there was some Federal database that is supposed to be current that can be looked at.

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Ave., NW

Washington, DC 20460

(202) 564-4992

From: Covington, Jeryl
Sent: Monday, February 9, 2015 3:41 PM
To: Wooden-Aguilar, Helena; Farrell, Ericka
Cc: O'Lone, Mary

Subject: RE: Assignment - REACH

While we were meeting on Ex. 5 - Deliberative Process Dayna Matthews completed a quick review of the DENR funding and identified the following.

The attached information indicates funding from both EPA and USDA. The US Corps, US F&W, and USGS were included in this funding listing.

The EPA funding appears to be related to WQ, watershed management, TMDL, wastewater revolving fund programs, and wetlands protection.

The USDA funding appears to be focused on easements, S&EC, and technical and financial assistance to install or implement structural and/or management practices on eligible agricultural land (this may be the link to the animal waste management systems).

Additionally, per the April 2004 memo to Bill Ross (former DENR Secretary) there was a working partnership between USDA and DENR's SWC Division.

From: Wooden-Aguilar, Helena
Sent: Monday, February 09, 2015 3:21 PM
To: Farrell, Ericka; Covington, Jeryl
Cc: O'Lone, Mary
Subject: Assignment - REACH
Importance: High

Ericka-

I need you to please work with the law clerks and upload relevant materials to the REACH SharePoint site that Mary. Regarding relevant materials, I believe all the items that Mary copied into a REACH folder on the OCR shared drive should be it. Please have this done by **February 11, 2015**. I have copied Mary in case I have misunderstood.

Also, I need you and Jeryl to check and see if NC DENR gets financial assistance from USDA (or anyone else). Please have this information to me, with a cc to Mary, by **February 10, 2015, COB**.

Appreciate your help.

Helena

Helena Wooden-Aguilar

Assistant Director

External Civil Rights – US EPA

202-564-0792 (office)

Ex. 6 - Personal Privacy

wooden-aguilar.helena@epa.gov